IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LINEAR TECHNOLOGY CORPORATION, Plaintiff, v. MONOLITHIC POWER SYSTEMS, INC., Defendant.	C.A. No. 06-476 (GMS) Confidential Version Filed: May 2, 2008 Public Version Filed: May 8, 2008

LINEAR'S REPLY IN SUPPORT OF ITS MOTION *IN LIMINE* NO. 3 TO PRECLUDE MONOLITHIC FROM REFERRING TO, OR OFFERING EVIDENCE RELATING TO, THE AMOUNT OF SALES OF THE ACCUSED MP1543 PRODUCT OR THE STIPULATED AMOUNT OF PATENT INFRINGEMENT DAMAGES BEFORE THE JURY

The stipulated amount of patent infringement damages and the number of infringing sales is not relevant to any issue to be tried in the case. Presentation of that to the jury can only serve to waste time, create confusion, and unfairly prejudice Linear.

ARGUMENT

Contrary to Monolithic's contention, it is simply not logical that the number of sales (or the stipulated damages for them) makes any difference to whether Monolithic infringed (as even a single manufacture or use can constitute infringement) or whether any customer used its purchased MP1543 as it was designed and intended to be used. The apparent suggestion that just because few were sold, they were used as doorstops or paperweights is nonsense. In any event, the record is clear why few were sold – Monolithic stopped selling the accused part because REDACTED not because the part was not used for its designed and intended purpose.[1] Indeed, Monolithic's CEO testified that the

[1] As such, Monolithic also cannot shoehorn its irrelevant evidence on the alleged ground that it is supposedly relevant to show a "lack of commercial success." (Opp. at 5).

MP1543's sales were minimal REDACTED Ex. 1, 8/29/07 Hsing deposition at 89:10-14.

Neither the low number of sales nor the stipulated damages rebuts the circumstantial evidence (*e.g.*, in the form of testimony and product literature about the structure, function, operation, and intended purpose of the MP1543[2]) of direct infringement contributed to and induced by Monolithic. Monolithic's misleading quote from the *DSU* decision cannot alter that. Monolithic is wrong to insinuate that Linear must prove that each accused part sold was used in an infringing manner. *DSU* makes no such pronouncement. Rather, the *DSU* court was simply making the unremarkable observation that there can be no indirect infringement, unless direct infringement follows. Linear does not have to show that each sale resulted in infringement; rather Linear just has to show that it is more probable than not that a customer used the MP1543 in the way it was intended to be used – namely, to infringe the Linear Patents.[3]

Monolithic is also wrong in maintaining that the amount of stipulated patent infringement damages is relevant to the enforceability of the liquidated damages provision.

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[2] *See Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, No. 00-1172, 2001 U.S. App. LEXIS 233, at *13 (Fed. Cir. Jan. 8, 2001) ("Proof of inducing infringement or direct infringement may be shown by circumstantial evidence … Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence"); *see also Pickholtz v. Rainbow Techs., Inc.*, 260 F. Supp. 2d. 980, 988 (N.D. Cal. 2003) (circumstantial evidence may be used to prove contributory infringement). The evidence in this case shows that the MP1543 has no substantial non-infringing use and was REDACTED REDACTED The natural consequences of such acts is use by the customers for the intended purpose, so this evidence is highly probative circumstantial evidence that customers directly infringed. *See Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 125 S. Ct. 2764, 2777 (2005) ("One who makes and sells articles which are only adapted to be used in a patented combination will be presumed to intend the natural consequences of his acts… .")

[3] The issue of whether each sale led to direct infringement could be relevant to the lost profits inquiry. *Chiuminatta*, 2001 U.S. App. LEXIS 233 at *9-13. But lost profits are not claimed here.

Liquidated damages provisions are presumed valid and are only unenforceable if the liquidated damages amount is disproportionate to the damages anticipated ***at the time the contract was made***. *Ridgley v. Topa Thrift & Loan Ass'n*, 17 Cal. 4th 970, 977 (Cal. 1998). That Monolithic has temporarily discontinued its infringing sales is irrelevant to the question of whether the liquidated damages were reasonable in 2005. In contrast, the facts that are relevant show that the liquidated damages were reasonably set in 2005.[4]

For the foregoing reasons, Linear respectfully requests an Order precluding Monolithic from referring to, or offering evidence related to, the amount of sales of the MP1543 or the amount of stipulated patent infringement damages in front of the jury.

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[4] Linear's CEO, who executed the Settlement Agreement, REDACTED REDACTED REDACTED 8/24/07 Maier dep. at 23:11-24:13. REDACTED REDACTED REDACTED *Id*; *see also* Linear's Theory of Damages set forth in its Pretrial Brief. The false issue of double recovery is not present here, particularly since internal costs associated with enforcing a patent license are not often remedied by the patent statute. *See Poseidon Dev., Inc. v. Woodland Lane Estates, LLC*, 152 Cal. App. 4th 1106, 1115 (Cal. Ct. App. 2007) (noting that a liquidated damages clause may be used to account for the cost of litigation if breach occurs).

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on May 8, 2008, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

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EXHIBIT 1

FULLY REDACTED